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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,667	10/17/2003	Philip L. White	870P009745-US(101)	2619
2512	7590	09/08/2004	EXAMINER	
PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824			TAWFIK, SAMEH	
			ART UNIT	PAPER NUMBER
			3721	
DATE MAILED: 09/08/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/688,667

Applicant(s)

WHITE ET AL.

Examiner

Sameh H. Tawfik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 8-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

(claim 12, lines 3-4) “..a fourth time period, ... a fifth time period.” is vague and indefinite because it is not clear what applicants are referring to by “a fourth time period” and “a fifth time period” and further more there is no indication on the claims for 1<sup>st</sup>-3<sup>rd</sup> time period.

(claim 14, line 25) “..a third time period” is vague and indefinite because it is not clear what applicants are referring to by “a third time period” and no indication for 1<sup>st</sup> and 2<sup>nd</sup> time period; etc.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-11 and 22-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Cherney (5,466,326).

Cherney discloses a heat sealing machine comprising a mechanism for dispensing a desired length of a heat sealable material (Fig. 2; via motion control of feeding the web 18); a processor (Fig. 2; via PLC 20) operable to automatically select a heating time (Fig. 2 and column 5, lines 42-47; via by controlling the speed of feeding the web it make it stay longer or shorter time in the sealing station), the heating time being the time when heat is applied to the heat

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sealable material (Fig. 1; via the time of applying hot air to the web), the heating time being selected based on one or more sealing parameters selected from the group of a minimum sealing temperature, a minimum heating time, a maximum sealing temperature, and a maximum heating time (column 5, lines 24-27); and a heating device (Figs. 2 and 13; via 14) for applying heat to a portion of the heat sealable material according to a processor controlled sealing routine that utilizes the automatically selected heating time (Figs. 2 and 3; via 20 PLC).

Regarding claims 9 and 27: the processor is operable to determine values for the minimum heating time and maximum heating time parameters (column 7, lines 17-20; note that for different velocity of the web is different heating time, because the web stay either shorter or longer time on the sealing station) based on whether a first sealing operation of a batch is being performed (column 7, lines 46-48).

Regarding claims 10 and 28: a bag selector for selecting one of a bag width or a bag thickness (via inserting web with different thickness or different material for example by an operator operating the machine column 7, lines 12-17) control for selecting a thickness of the heat sealable material, wherein the processor is operable to determine values of the sealing parameters based on the thickness of the heat sealable material (column 7, lines 12-17) and a heating time different from the seal time for the automatically selected bags (note that it is inherent Cherney's blowing hot air contacting with the web is different than the heating time required to seal the film through the hot air seal arm, Fig. 2).

Regarding claim 11: the processor is operable to compare the automatically selected heating time to a minimum sealing time and a maximum sealing time (Figs. 2 and 3; via alarm 27 to avoid from exceeding the minimum or maximum sealing time).

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Regarding claim 23: wherein a bag count of 0 results in a first sealing time (Fig. 2; via right before feeding the web to the sealing station).

Regarding claim 24: wherein a bag count of other than 0 results in a second sealing time (via after feeding the web to the sealing station).

Regarding claim 25: wherein the program is operable to compare the automatically selected sealing time to a minimum sealing time and a maximum sealing time (Figs. 2 and 3; via alarm 27 to avoid from exceeding the minimum or maximum sealing time) determined by a thickness of the dispensed bag (column 7, lines 12-17).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherney (5,466,326).

Cherney discloses a preheat the heating device (note that by turning on the sealing apparatus it goes through an initial stage of pre-heating to get to the final heating stage) and cool stage (column 1, lines 20 and 21). Cherney does not disclose that preheat the heating device for a fourth time period nor cooling the heating device for a fifth time period. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Cherney's sealing machine by pre-heating the heating device for a fourth time period and cooling the heating device for a fifth time period, in order to accurately sealing the

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web and get best sealing result to the film and it has been held that where the general conditions of a claim are disclosed in the prior art, discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

***Response to Arguments***

Applicant's arguments filed 06/30/2004 have been fully considered but they are not persuasive. Applicants argue in page 8 of the arguments that Cherney's reference does not suggest that a processor operable to automatically select a heating time (the time in which power is applied to the heat sealable material) nor selects the heating time itself. The examiner believes that applicants are arguing about issue not claimed on the claims which is about "the time in which power is applied to the heat sealable material" and/or further Cherney's reference disclosing a processor (14) operable to automatically select a heating time (via by controlling the velocity of the film, that way also controlling the heating time to the film, indented use).

Applicants further argue in page 9 of the arguments that no where in Cherney's reference discloses or suggest of the processor is operable to determine values for the minimum heating time and maximum heating time parameters. The examiner still believes that Cherney's reference as disclosed on the rejection to claim 9 above discloses the processor is operable to determine values for the minimum heating time and maximum heating time parameters (column 7, lines 17-20), note that for different velocity of the web is different heating time, the web stay either shorter or longer time on the sealing station which is determined by the speed of the web as controlled by the processor.

Applicants argue in page 11 of the arguments that no where in Cherney's reference teaching of where the sealing time is selected according to a bag count and or more of a parameter of the sealing device according to claim 22. The examiner noted that Cherney's reference discloses controller to control the velocity of the web in order to control the heating time of the film, is equivalent to a bag count.

Applicants argue in page 11 of the arguments that nowhere in Cherney discloses where a bag count of 0 results in a first sealing time according to claim 23. The examiner believes it is inherent that at first feeding the film to the sealing station is equivalent to a count of 0 as set forth and it is clear that Cherney controlling the temperature applied to the film through the velocity of the film which is equivalent to bag count.

Applicants further argue in page 12 of the arguments that no where in Cherney is there a disclosure of where a bag count of other than 0 results in a second sealing time. The examiner believes that it is inherent Cherney's by controlling the velocity of the web is disclosing a bag count other than 0.

Applicants argue in page 14 of the arguments that no where in Cherney is there a disclosure of having a bag selector for selecting one of a bag width or a bag thickness for effecting an automatic bag selection as claimed, instead, Cherney discloses different films and thickness and establishing different calibration values for different films and thickness of a single film. The examiner believes that Cherney's reference discloses controlling the sealing and heating time based on the thickness and type of the web (column 7, lines 12-17) and it is inherent that an operator will be selecting the proper web based on thickness and material to be inserted to

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the apparatus and then the apparatus adjust the speed to control the heating time, in this situation examiner believe the operator as a bag selector for selecting one of a bag width.

Applicants further argue in page 15 of the arguments that no where in Cherney is there a disclosure of where during the processor controlled sealing routine, the processor is operable to preheat the heating device for a fourth time period and is operable to allow the heating device to cool for a fifth time period. The examiner believes that Cherney discloses preheating the web via by the entry of the web to the heating zone is considered as preheating zone, note that it is fourth and fifth time is confuse because applicants are referring to fourth and fifth time period without referring to 1<sup>st</sup>-4<sup>th</sup> time period.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.




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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is (703) 308-2809. The examiner can normally be reached on Tuesday - Friday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ST.



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